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No Easy Season For Conferees Handed Differing Defense Bills

By John M. Donnelly, CQ Staff

Lawmakers in charge of determining the size of defense programs face a difficult summer as the House and Senate begin to reconcile their conflicting versions of the fiscal 2005 defense authorization bill.

After weeks of debate on a range of complex and often politically charged issues, the Senate passed its measure (S 2400 — S Rept 108-260) by a 97-0 vote just before midnight June 23, authorizing a record \$447.2 billion for the Defense and Energy departments. The House passed its bill (HR 4200 — H Rept 108-491), which authorized an identical amount, on May 20. (*Senate Vote 146, p. 1577*)

“I guess we landed another one — not necessarily in record time,” said John W. Warner, R-Va., chairman of the Senate Armed Services Committee, who shepherded the bill through 16 days of debate that began May 17.

The weeklong Fourth of July recess will offer conferees brief respite. Upon their return to Washington, they will face several issues that divide House members from senators, Republicans from Democrats and Congress from the administration.

The thorniest questions involve whether to delay a planned 2005 round of military base closures and how best to keep jobs in the U.S. defense industry. But there are other issues that also could complicate the conference. Among them: whether to provide expensive new benefits for military personnel and their families, and how much Congress should legislate oversight on a potential \$23.5 billion Air Force acquisition of 100 Boeing Co.-built refueling tanker planes.

Finally, conferees also must grapple with how many soldiers and Marines should be in the U.S. military and how Congress should respond legislatively to the abuse of detainees in U.S. military prisons. (*Leahy, p. 1567*)

The Base Closure Quandary

The House-Senate defense authorization conference could start as early as July. And when it does, perhaps the biggest single sticking point between the two measures will be the House provision to delay a planned 2005 round of base closures until 2007. The Senate bill has no such language — though it nearly did, before that chamber on May 18 narrowly defeated a proposal by Trent Lott, R-Miss., and others to kill the U.S. round next year and instead close U.S. bases abroad.

The White House has threatened that President Bush will veto any defense bill that “weakens, delays or repeals the BRAC authority,” referring to the congressionally appointed Base Realignment and Closure Commission. The Pentagon wants to close U.S. bases because it has almost 25 percent more capacity than it needs, and it says the money spent sustaining those facilities is required for modernizing weapons and other needs.

Duncan Hunter, R-Calif., the chairman of the House Armed Services Committee who will head the House conferees, has not been vocal either for or against base closure. But he supports members of his committee such as Joel Hefley, R-Colo., chairman of the Subcommittee on Readiness, who want to delay the next round on the grounds that a war is no time to cut bases. Hunter voted on the House floor against an amendment by Mark Kennedy, R-Minn., to undo the two-year deferment.

On the other side of Capitol Hill, the most senior members of the Senate Armed Services Committee — Warner, ranking Democrat Carl Levin of Michigan and No. 2 Republican John McCain of Arizona — adamantly support the 2005 base-closing round.

In recent years, the House-Senate defense authorization conference has snuffed out attempts to delay or modify BRAC. If

history repeats itself, the base issue will cause political bloodshed in the conference but not beyond it. (*Background, CQ Weekly*, p. 647; *2001 Almanac*, p. 7-3)

This year, however, could be different. The Senate vote on Lott's amendment was close. And because many House members perceive that delaying base closure is important to their electoral chances, they may fight to retain the delay in conference. If they win and send such a bill to the president, Bush will face a difficult choice: He can reverse course and spend billions a year on excess capacity, or he can veto a defense bill with U.S. troops fighting in Iraq and Afghanistan.

Conferees will have to decide whether to put him in that position. They will also have to consider the political risk to themselves of possibly not enacting a defense authorization bill that contains a 3.5 percent pay raise and new benefits and equipment for military employees during wartime.

Protectionist Provision

The other hot-button issue awaiting defense authorization conferees is commonly known by the shorthand term "Buy America." The phrase refers broadly to protectionist provisions requiring that the government buy products that are made in the United States.

The House version of the defense bill contains a provision that would take aim at "offsets," the practice whereby a foreign country, as a condition of buying military hardware from U.S. companies, requires those companies to invest in the purchasing country's economy.

Hunter said his provision would require the Defense secretary "to ensure that the offset regulations or policies of a foreign country are reduced to the same level as the domestic-content requirements of the United States before contracting for defense products from a foreign firm operating in that country."

By contrast, the Senate version increases the likelihood that U.S. defense firms could face competition from abroad. On June 22, the Senate passed, by a vote of 54-46, a McCain amendment allowing the Defense secretary to waive Buy America laws for a handful of close U.S. allies, broadening the secretary's current waiver authority. (*Senate Vote 135*, p. 1575)

The Pentagon, as well as numerous embassies and defense industry trade groups, strongly oppose protectionist provisions such as those found in the House bill, considering them threats to the United States' 6-to-1 defense trade surplus with Europe.

But Hunter thinks provisions that ensure domestic content in military products or penalize countries that require U.S. contractors to invest abroad are the best ways to protect U.S. jobs.

In the conference for last year's defense authorization bill (PL 108-136), Hunter unsuccessfully sought to legislate domestic-content requirements for U.S.-made weapons. The battle last year was hard-fought, sometimes personal and unusually public. Hunter and Warner exchanged heated letters on the subject that ended up in the news media. (*2003 CQ Weekly*, p. 2462)

Their bad blood appears to have resurfaced this year over the Iraqi prisoner abuse issue. Last month, as Warner held his first hearings on the matter, Hunter urged Warner's panel May 21 to "turn away from this prison mess and get on with the work of maintaining our military." Hunter also accused Warner of calling generals home from Iraq just for such hearings, a charge Warner publicly refuted.

The Tanker Tussle

Another issue certain to divide House and Senate conferees involves Boeing's embattled tanker program. The proposal to lease 20 and buy 80 tanker aircraft has not gone forward because of questions over the need for the planes and the budgetary sense of leasing them. Ethical and criminal allegations also have arisen about some of the Air Force and Boeing officials who had promoted the project. (*CQ Weekly*, p. 1299)

The most recent delay was announced May 25, when Secretary of Defense Donald H. Rumsfeld put off a decision on the acquisition for at least six months until studies are completed on the requirement for the planes and the best way to meet it.

Yet the House bill provides what Hunter calls a “fresh start” for the tanker program. It would authorize \$98.5 million for it, require that a contract be signed by March 2005 and set up an independent commission to ensure that any deal protects taxpayers.

A McCain amendment adopted on June 22 without debate would codify Rumsfeld’s pledge to complete the two studies before signing any contract. McCain’s amendment also requires that any tanker contract be reviewed by the Pentagon inspector general and the General Accounting Office and that it meet Office and Management and Budget scoring rules for leases. A Senate Republican aide said the OMB provision could mean the Air Force would have to pay up front for the planes it leases — negating the reason to lease rather than purchase the aircraft, which is to pay less at the outset.

“The history of the Air Force’s attempt to recapitalize its tanker fleet has been riddled with corporate scandal, public corruption and political controversy,” McCain said in a statement.

Benefits and Costs

Another bone of contention: two programs that would create costly new benefits for military personnel and their families. These proposals are a source of conflict not so much between the House and the Senate as between Congress and the administration.

The first of them provides more benefits for survivors of deceased military personnel. With the House bill including a provision that would halt the drop in annuities to the widowed spouses of service members once they turned 62, the Senate adopted by voice vote a similar amendment by Mary L. Landrieu, D-La. Both proposals would authorize the spending of billions of dollars over the next decade.

The other costly initiative, found only in the Senate bill, would give members of the National Guard and reserves access to the military’s Tricare health system even when they were not deployed. Reservists now get coverage only while on active duty and for a limited period thereafter. Senate adoption of the Tricare amendment June 2 was a rebuke to the administration and Warner, who had argued that the plan, with an estimated cost of \$14.2 billion over 10 years, was too costly and would lower reservists’ incentives to join the regular forces. (*CQ Weekly*, p. 1360)

Warner beat back other Democratic attempts to expand military benefits. The Senate rejected an amendment by Jon Corzine of New Jersey to bring down the retirement age for reservists. The vote of 49-49 fell short of the 60 votes required to overcome a budgetary point of order. Senators also rejected an amendment by Minority Leader Tom Daschle, D-S.D., to boost benefits for veterans at an average annual cost of \$30 billion. Under a similar point of order, the vote was 49-48. (*145*, pp. 354, 351)

Troop Strength

In early May, it appeared that the debate over how many men and women should be in uniform would sharply divide House and Senate authorizers this year. The Army had already temporarily increased its size by 30,000 soldiers over four years, using emergency powers. But the Pentagon did not want to be forced by law to keep more people on the payroll.

Hunter, though, said the administration would accept more people as long as they were paid for, so he did both: The House version requires 30,000 more soldiers and 9,000 more Marines over the next three years and authorizes the funds to pay for them.

Meanwhile, the Senate adopted an amendment June 17 that calls for a mandatory increase of 20,000 Army troops in fiscal 2005.

Although the House and the Senate are now not as far apart on the troop-strength issue as they appeared a month ago, another issue puts more of a wedge between Congress and the White House than between conferees.

In retrospect, the Senate's debate over the defense bill was not only long — 195 amendments were considered — it was also a partisan affair. Democrats lost four different party-line votes on missile defense amendments, three of which required independent testing of the proposed missile shield the president plans to deploy in Alaska and California starting this fall. (*139, pp. 354, 351*)

Democrats also failed by close margins to create a law against “war profiteering,” to bar contractors from interrogating prisoners and to ban research into a new generation of nuclear weapons. (*CQ Weekly, p. 1500*)

The Senate did manage to get votes on the military bill for non-defense matters, including tripling fines for broadcast indecency and expanding federal hate crime laws to cover sexual orientation, gender and disability. (*Senate Vote 134, p. 1575*)

Jessica Kimpell contributed to this report.